

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEPHEN GANNON,	:	
	:	
Plaintiff,	:	
	:	22-CV-1643 (VSB)
-against-	:	
	:	<u>ORDER</u>
78 ORCHARD STREET LLC, et al.,	:	
	:	
Defendants.	:	
	:	
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VERNON S. BRODERICK, United States District Judge:


Plaintiff filed this action against Defendants 78 Orchard Street LLC and Orchard Grocer Inc. on February 28, 2022, (Doc. 1), and filed affidavits of service on March 15, 2022, (Docs. 7 & 8). The deadline for Defendants to respond to Plaintiff’s complaint was April 1, 2022. (*See* Docs. 7 & 8.) On April 4, 2022, I directed Plaintiff to seek default judgment by no later than April 11, 2022. (Doc. 9.) I warned, “If Plaintiff fails to do so or otherwise demonstrate that he intends to prosecute this litigation, I may dismiss Plaintiff’s claims for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” (*Id.*) On April 8, Defendants filed their answer to Plaintiff’s complaint. (Doc. 14.) On May 2, 2022, I entered a case management plan and scheduling order. I granted extensions and revised case management plans on June 8, July 28, September 2, and October 4, 2022. (Docs. 18, 25, 32, 34.) On July 14, 2022, Defendants filed a letter motion requesting that I dismiss the case or stay the deadlines in the case management plan for failure to prosecute, comply with the case management plan, and respond to Defense counsel’s communications. (Doc. 25.) On July 25, 2022, I denied that motion to dismiss. (Doc. 29.) On December 5, 2022, Defense counsel filed a second motion to dismiss, or in the alternative, to stay the deadlines in the current case management plan. (Doc. 41.) In this

letter, Defense counsel explained that despite sending emails, making phone calls, and serving interrogatories, Plaintiff's counsel has not communicated with him in any way, or complied with the discovery deadlines in the case management plan. (*Id.*) Plaintiff did not file any response to the motion.

Accordingly, Plaintiff's claims are dismissed without prejudice pursuant to Rule 41(b). The Clerk of Court is respectfully directed to terminate the pending gavel at Doc. 41 and terminate this action.

SO ORDERED.

Dated: December 20, 2022
New York, New York


VERNON S. BRODERICK
United States District Judge